

Brazilian National Congress

## 2018 and the Legalization of Gambling in Brazil

### What to expect?

By Edgar Lenzi

**T**he year 2017 has come to an end and a very interesting development was seen regarding the advancement of the legalization of gambling in Brazil which has taken place via several measures.

First and most important of all, are the two gambling bills that are being processed by the Brazilian Congress, which are PL 442/1991 (The House of Representatives' Bill) and PLS 186/2014 (The Senate's Bill), in which all types of gambling could be legalized, besides others below.

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The Senate's Bill is currently at the Constitutional and Justice Commission (CCJ) of the Senate. The Senate's CCJ is expected to vote the Project on the first meeting session of 2018, on February 21st. After the vote by the CCJ, the Project will then await inclusion on the Senate's Plenary agenda for vote. The reason this Project was not yet voted by the CCJ is the Rapporteur of the Bill on the CCJ – Senator Benedito de Lira – presented a new version of the Bill for the CCJ. Then, Senator Magno Malto – also a member of the Senate's CCJ – asked for more time to analyze the bill. On the last meeting session of 2017, when the CCJ was going to vote the Project, the Senate's Speaker, Senator Eunício de Oliveira, determined that all Senators should attend a Plenary meeting immediately, which caused PLS 186/2014 to not be voted by the CCJ.

As for the PL 442/1991 - The House of Representatives' Bill - it is currently waiting to be included for vote on the Chamber's Plenary Agenda. Last year there was an Urgency Request for the vote of PL 442/1991 by the House's Plenary; however, there was no resolution on this matter. The biggest issue with regards to the House Bill is the fact that there is no consensus about what gaming types should be legalized. The current version of the bill provides for the legalization of all types - which is the point of view of the Par-

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liamentary Front for the Legalization of Gambling in Brazil (a group of congressmen that are in favor of the legalization of all gambling types). However, Rodrigo Maia (House of Representatives' Speaker) is of the opinion that only casinos should be legalized. This disagreement between Maia and the Parliamentary Front has held back the vote on PL 442/1991, which can be expected to occur in 2018.

As mentioned above, House Speaker Rodrigo Maia is in favor of the legalization of casinos only. PL 442/1991 currently provides for all forms of gambling. Thus, in order for him to have approved only casinos, the speaker would either need to change PL 442/1991 (which would make the process take more time) or he could try to include for voting the New Tourism Bill, after an amendment for the inclusion of casinos. This New Tourism Bill aims to put together three others - Bills 2724/2015, 7425/2017 and 7413/2017 that intend to modernize the Brazilian Tourism sector, with the creation of the New EMBRATUR - Brazilian Agency for the Promotion of Tourism along with other measures. Maia could use this option to try to put to vote a Bill that would approve only casinos. This possibility could go forward; however, Maia would need to gather a lot of polit-

ical strength from his allies, which would demand a lot of time for debates and discussions and could cause friction with the congressmen members of the Parliamentary Front for the Legalization of Gambling, especially because they are working for the approval of all types of gambling, not just casinos.

Also, there is a very important judicial debate about the Constitutionality of articles 50 - 58 of Decree Law 3,688/1941 (which is the piece of Legislation that provides for the prohibition of Gambling in Brazil). The center of this discussion is the possible atypicality of the conduct of exploring/operating Gambling in Brazil because, according to many judges and courts, the Decree Law 3,688/1941 was not received by the current Brazilian Constitution (which is from 1988). This happens because in order for a law that is prior to the Constitution to be valid, it must be received by the Constitution; in other words, it cannot be contrary to the principles, guarantees and values that the Constitution introduced to the legal system. If it is contrary to the principles, guarantees and values, it will be considered unconstitutional and should be considered to be outside of the legal system and produce no effects. This discussion was taken to the Brazilian Supreme Court by means of an Extraordinary Appeal (RE 966.177) filed by the Public

Prosecution Office of the State of Rio Grande do Sul, and it was determined by the Ministers that this possible non reception of Decree Law 3,688/1941 must be judged by the Court by mid-2018.

The possible outcomes from the decision that will be taken by the Supreme Court are:

- a) The recognition that the Decree Law 3,688/1941 was in fact received by the Constitution. This result would not change the current legal situation of gambling in Brazil - in other words, that gambling is considered illegal and has been considered illegal since the prohibition in 1941;
- b) The recognition that the Decree Law 3,688/1941 is contrary to the values of Constitution and was not received by it, meaning that it is unconstitutional. This would mean that the prohibition of Gambling would no longer be valid; however, the Supreme Court would have to review the effects of the decision, and could organize its opinion so as to not result in an immediate end for the prohibition - especially for legal certainty.

Aside from the mentioned Gambling Bills, there is also the privatization of LOTEX (Instant Lotteries) that



should have happened in 2017, and that is now expected to happen in 2018. The Ministry of Finance has held several road shows in 2017 for the explanation of the privatization process of LOTEX, which is expected to happen in the auction format. In the mentioned road shows, the SEAE (Secretariat for Economic Issues) of the Ministry of Finance has presented the LOTEX opportunity with the consultancy firm Ernst & Young, which was responsible for the elaboration of all studies and business plan development for LOTEX. The bidding for LOTEX was submitted for analysis of the Federal TCU (Audit and Compliance Court), which concluded that there are some points that need clarification from the Ministry of Finance and by SEAE (Secretariat for Economic Issues). Because of the mentioned request of the TCU, the bidding process for LOTEX is expected for the second semester of 2018, once the TCU request is answered.

Besides LOTEX, there is also a new possibility for the operation of State Lotteries. The State Lotteries, that have been prohibited since 1967 (except for some states), are now subject of a new bill that aims to legalize this form of lotteries. Deputy Hugo Leal has proposed a State Lotteries Bill that, if approved, will allow the state to conduct its own lotteries and is something that will present development during 2018.

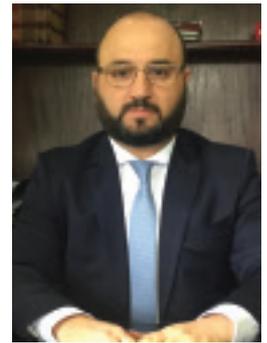
On the Sports Betting perspective, in late 2017, *Caixa Econômica Federal* has held a bidding process for the selection of a consultancy firm to

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develop a business plan and other studies for a fixed odd Sports Betting operation in Brazil. The mentioned Sports Betting operation would be privatized for a private operator (one of more than one) in a model similar to the one used for LOTEX. The firm that won the consultancy bidding process was Ernst & Young, and once the studies and business plan are presented, a privatization process with road shows shall be expected also for the Sports Betting operation.

A couple of bill projects that also should show development in 2018 are PL 57/2011 and PLS 213/2017. Bill PL 57/2011 provides for the prohibition of online betting and still awaits analysis by the Finance and Taxation Commission and also by the Constitutional and Justice Commission. Bill PLS 213/2017 provides for the prohibition of credit/debit/virtual currency operations on gambling websites located outside of Brazil. This project waits to be analyzed by the CAE - Commission for economic issues.

Therefore, it is possible to conclude that 2017 showed great development for the legalization of gambling in Brazil, meaning that it is something that has been building up during the previous years. It is now facing a key moment, in which many possibilities point to the same direction, a direction in which gambling is to become legal, either in a complete way - that would be good for the entire market - or in a partial way, with the legalization of one or some gambling types which would not be the ideal for the market, but that would, however, be a start. This is the reason the gambling community should look at 2018 as a turning point for Brazil and start taking measures with regards to setting a foot in Brazil since it is likely that gambling will be legalized in the country. It is just a matter of when and on what terms this will happen. ♣



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